

MEMORANDUM OF UNDERSTANDING

Between the Delta Stewardship Council and the San Francisco Bay Conservation and Development Commission To Facilitate the Implementation of the Sacramento-San Joaquin Delta Reform Act of 2009, Including Coordination and Collaboration on Planning in the Suisun Marsh and Climate Change Adaptation

The Delta Stewardship Council ("Council") and the San Francisco Bay Conservation and Development Commission ("Commission") enter into this memorandum of understanding ("MOU") to facilitate the implementation of the Sacramento-San Joaquin Delta Reform Act of 2009 (Div. 35 (commencing with Water Code section 85000); "Delta Reform Act"), including the establishment of a process for coordination and collaboration on planning and resource management in the Suisun Marsh and addressing climate change.

WHEREAS, the San Francisco Bay Conservation and Development Commission, as an independent California state agency established under Title 7.2 of the Government Code (the "McAteer-Petris Act"), is responsible for ensuring that development within the San Francisco Bay segment of the California coastal zone is consistent with the McAteer-Petris Act, the Suisun Marsh Preservation Act, the San Francisco Bay Plan ("Bay Plan") adopted by the Commission, the California Environmental Quality Act, and the San Francisco Bay segment of the California coastal zone management program ("Commission's laws and policies"); and

WHEREAS, Section 29004 of the Suisun Marsh Preservation Act ("Marsh Act") required the Commission to prepare the Suisun Marsh Protection Plan ("Marsh Plan") for the orderly and long-range conservation, use and management of the natural, scenic, recreational and man-made resources of the marsh implemented by the Legislature in the Marsh Act; and

WHEREAS, the Marsh Act grants the Commission regulatory authority to issue marsh development permits in the primary management area of the Suisun Marsh, defined in Section 29102 as water-covered areas, tidal marshes, diked-off wetlands, seasonal marshes, and lowland grasslands specified on the Marsh Plan Map;

WHEREAS, the Marsh Act also established a secondary management area composed principally of upland grasslands and cultivated lands, also specified on the Marsh Plan Map, to serve as a buffer between the primary management area and developed lands outside the Marsh; and

WHEREAS, within the secondary management area, local governments issue marsh development permits pursuant to a local protection program certified by the Commission, and these permits can be appealed to the Commission; and

WHEREAS, the Delta Stewardship Council is an independent California state agency established under the Delta Reform Act and is responsible for developing, adopting and commencing implementation, by January 1, 2012, of a legally-enforceable, comprehensive long-term resource management plan for the Delta, referred to as the Delta Plan; and

WHEREAS, Water Code Section 85300(a)(1) requires the Delta Plan to further the "coequal goals," which are defined in Water Code Section 85054 as "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

WHEREAS, with respect to the Delta Plan, Water Code Section 85058 defines the "Delta" to mean the Sacramento-San Joaquin Delta as defined in Water Code Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Suisun Marsh Preservation Act; and

WHEREAS, Water Code Section 85300(b) requires the Council to consult with federal, state and local agencies with responsibilities in the Delta in developing the Delta Plan, and requires such agencies to cooperate with the Council in developing the Plan; and

WHEREAS, Water Code Section 85350 authorizes the Council to incorporate other completed plans related to the Delta, such as the Marsh Plan, into the Delta Plan to the extent that the other plans promote the coequal goals; and

WHEREAS, Water Code Section 85300(d)(1)(A) requires the Delta Plan to be consistent with the federal Coastal Zone Management Act, or an equivalent compliance mechanism, and paragraph (2) of that subdivision requires the Council, if it adopts the Delta Plan pursuant to the federal Coastal Zone Management Act, to submit the Delta Plan for approval to the U.S. Secretary for Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to federal law enacted after January 1, 2010; and

WHEREAS, Water Code Section 85225 et seq. requires a state or local public agency that proposes to undertake a "covered action", to prepare and file with the Council, prior to commencing implementation, a certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan; and authorizes any person to file an appeal of that certification to the Council, which, following a hearing, must either deny the appeal or remand the matter to the state or local public agency for reconsideration of the covered action based upon a finding of inconsistency with the Delta Plan; and

WHEREAS, Water Code Section 85057.5 (a) defines a "covered action" under the Delta Plan as a plan, program or project that meets all of the following conditions:

1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
2. Will be carried out, approved, or funded by the state or a local public agency;
3. Is covered by one or more provisions of the Delta Plan; and
4. Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta; and

WHEREAS, Water Code Section 85057.5 (b) (1) states that a "covered action" does not include a regulatory action of a state agency; and

WHEREAS, Governor Arnold Schwarzenegger in Executive Order S-13-08 directed the California Natural Resources Agency to lead the development of a climate adaptation strategy, which was completed in December 2009; and

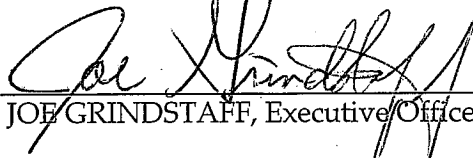
WHEREAS, the California Climate Adaptation Strategy states, "Policy coordination for sea level rise, and all climate impacts, is necessary to increase overall awareness of climate change, to encourage the efficient use of resources and expertise, to streamline interagency permitting processes and prevent or reduce the possibility of unintended consequences."

NOW, THEREFORE, the Commission and the Council agree as follows:

1. **Support Consistency with, and approval under, CZMA.** The Commission will provide staff-level, technical support and advice to the Council to assist it in developing a Delta Plan that is consistent with CZMA and that may be approved by the Secretary of Commerce under that act. This support will include review of the Council's Delta Plan and advice regarding consistency with the Commission's approved coastal management program under CZMA.
2. **Coordinated Review of Plans and Projects in the Suisun Marsh.** The Commission and the Council will develop a process for ensuring consistency of their policies in the Suisun Marsh and for collaborating on review of proposed projects in the Suisun Marsh as follows:
 - a. The Council will consider the Commission's Marsh Plan, including findings, policies and maps designating primary and secondary management areas, for possible incorporation into the Delta Plan, and before approval of the Delta Plan, will consult with the Commission regarding consistency of the Marsh Plan with the coequal goals and other provisions of the Delta Reform Act;
 - b. The Commission will submit amendments of the Marsh Plan and components of the Suisun Marsh Local Protection Program to the Council for review for consistency with the Delta Reform Act and Delta Plan;
 - c. The Council will provide notice of proposed covered actions impacting the Suisun Marsh shortly after the Council becomes aware of those proposed actions. In any event, when a state or local agency files a certification of consistency with the Council regarding a proposed covered action impacting the Suisun Marsh, the Council will send a copy of the certification to the Commission within 15 days. If a party files an appeal of the certification, the Council will send a copy of the appeal to the Commission at least 28 days in advance of a public hearing;
 - d. The Commission will notify the Council when it receives an application for a marsh development permit in the primary management area, or an appeal of a marsh development permit in the secondary management area. The Commission will send a copy of the complete major permit application, appeal, or administrative listing of a minor permit, as well as the public hearing notice, to the Council at least 28 days in advance of a public hearing;
 - e. For "covered actions" in the Suisun Marsh that also require a major marsh development permit in the primary management area from the Commission, the Council and the Commission will consult and coordinate to promote efficient action; provided that both entities will make independent determinations as required by law; and
 - f. The staffs of the two agencies will work cooperatively on issues of mutual concern.
3. **Coordination of Climate Change Policies.** The Commission and the Council will coordinate in the development of policies related to sea level rise and other climate change impacts as follows:
 - a. During the development of climate change adaptation policies, the Commission and the Council will provide each other with proposed policies and public hearing notices;


- b. The Commission and Council will participate in forums and working groups with other state and federal agencies, scientists and stakeholders to develop statewide climate change adaptation policies; and
 - c. The parties acknowledge that the need for such actions, including scientifically-supported ranges of potential sea level rise for planning purposes is essential for inclusion in the Delta Plan to be adopted by the Council.
4. **Term.** This MOU shall become effective when signed by both parties ("the effective date") and shall remain in effect until terminated by one or both of the parties.
 5. **Termination.** Either party may terminate this MOU for any reason by providing the other party with thirty days notice in writing.
 6. **Amendment.** Any modification, waiver, or amendment of any provision of this MOU shall be effective only if in writing and signed by both parties.
 7. **Authority.** Each of the parties represents and warrants that it has the full power and authority to execute, deliver and perform under this MOU.
 8. **No Limitation on Existing Authority.** Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Council or the Commission.
 9. **Subject to Available Appropriations.** Nothing in this MOU requires the Council or the Commission to assume or expend any funds in excess of available appropriations authorized by law.
 10. **Public Records Act Requests.** Any information furnished between the Council and the Commission under this MOU, including the MOU itself, is potentially subject to the California Public Records Act. The parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith in the event either party desires to assert a privilege or exemption permitted by the Public Records Act.

DELTA STEWARDSHIP COUNCIL

By: 
 JOE GRINDSTAFF, Executive Officer

2/3/2011
 Date

**SAN FRANCISCO BAY CONSERVATION
 AND DEVELOPMENT COMMISSION**

By: 
 WILL TRAVIS, Executive Director

20 January 2011
 Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DELTA STEWARDSHIP COUNCIL
AND THE DEPARTMENT OF FISH AND GAME
TO FACILITATE THE IMPLEMENTATION OF
THE SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009**

I. PARTIES

This Memorandum of Understanding (MOU) is made on ^{January 4, 2011} ~~December 1, 2010~~ by and between the Delta Stewardship Council (Council or DSC) and the Department of Fish and Game (DFG) (collectively Parties) regarding implementation of the Sacramento-San Joaquin Delta Reform Act of 2009 (Act).

II. INTRODUCTION AND BACKGROUND

The Act establishes two co-equal goals for the Sacramento-San Joaquin Delta (Delta) including providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The Act specifies that the co-equal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place, and protects, maintains, and, where possible, enhances and restores the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities. In addition, the Act created the Council as an independent agency of the state vested with the authority to develop a comprehensive and legally enforceable management plan for the Delta (Delta Plan) that furthers the co-equal goals.

The Act specifies that the Delta Plan shall further the restoration of the Delta ecosystem, include recommendations regarding state agency management of lands in the Delta, and include performance measurements that will enable the Council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include quantitative or otherwise measurable assessments of the status and trends in the health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats and processes, including viable populations of Delta fisheries and other aquatic organisms. The Council must establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency must coordinate its actions pursuant to the Delta Plan with the Council and the other relevant agencies. Additionally, the Council is tasked with developing and implementing a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with applicable federal laws.

The Act requires DFG to develop Flow Criteria for the Delta and measurable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. DFG developed and presented the Flow Criteria to the State Water Resources Control Board

in November 2010. DFG developed the criteria in consultation with the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) and based upon the best available science. The Act also specifies that the Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan. DFG will be responsible for approving the BDCP under the Natural Communities Conservation Planning Act (Fish and Game Code section 2085 et seq.) upon its completion. The BDCP development process is in progress.

DFG through its involvement in the Interagency Ecological Program (IEP) and other investigations related to biological resources and regulatory compliance in the Delta is actively involved in scientific research, monitoring, and assessment programs in the Delta. In addition, DFG is designated as the state implementing agency for the CALFED Ecosystem Restoration Program (ERP) along with its federal counterparts, FWS and NMFS. DFG administers an ongoing grant program which funds research to address a common understanding of the Delta ecosystem as well as planning and implementation of restoration and enhancement projects in the Delta and broader ERP focus areas to achieve the goals of the ERP Strategic Plan. DFG has developed the ERP Stage 2 Conservation Strategy for the Delta and Suisun Marsh and will be developing similar strategies for the Sacramento and San Joaquin River Watersheds. DFG is responsible for developing biological performance measures to judge the success of ERP actions and support adaptive management. DFG is working with the Department of Water Resources through its regulatory authorities and the ERP to assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Landing tidal marsh restoration.

III. PURPOSE AND DEFINITIONS

The purpose of this MOU is to form a cooperative relationship and facilitate coordination between the parties as they implement requirements mandated by the Act. The Act requires the Council, on or before January 1, 2012, to develop, adopt, and commence implementation of the Delta Plan. The Act specifies that the Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta and that the Council shall consult with federal, state, and local agencies with responsibilities in the Delta. The Act mandates that all state agencies with responsibilities in the Delta shall cooperate with the Council in developing the Delta Plan, upon request of the Council. In addition, the Act requires DFG to develop Flow Criteria for the Delta and measurable biological objectives for aquatic and terrestrial species.

The terms used in this MOU shall be afforded the following meaning:

"Co-equal goals", as defined in Water Code section 85054, means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

"Delta" means the Sacramento-San Joaquin Delta as defined in Public Resources Code (PRC) section 12220 and the Suisun Marsh, as defined in PRC section 29101.

"Delta Independent Science Board" or "DISB" is the board established within the Council. The DISB is charged with providing oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta. DISB will be responsible for periodic reviews of these programs, with reviews occurring at least once every four years. The Delta Science Program replaces the CALFED Science Program and the Delta Independent Science Board replaces the CALFED Independent Science Board.

"Delta Plan" means the comprehensive, long-term management plan for the Delta that will be developed, adopted and implemented by the Council in accordance with the Act.

"Ecosystem Restoration Program" or "ERP" means the CALFED Ecosystem Restoration Program for which implementing responsibility was transferred to DFG in 2006.

"Bay Delta Conservation Plan" or "BDCP" is a multi-species conservation plan for the Delta which would provide for the conservation of species and habitat in the Delta while providing for water supply reliability.

"Natural Community Conservation Plan" or "NCCP" is a plan that provides for the comprehensive management and conservation of multiple species on a landscape or ecosystem level and is a vehicle by which DFG can authorize the take of listed species pursuant to Fish and Game Code (FGC) section 2821.

IV. AUTHORITY

DSC is the state agency responsible for development, adoption and implementation of the Delta Plan for the purpose of achieving the co-equal goals for the Delta as specified in the Act.

DSC is a legally mandated responsible agency to the BDCP's California Environmental Quality Act planning process and is also responsible for determining, on appeal, whether DFG's determination that the BDCP meets the Act's requirements for inclusion in the Delta Plan is correct.

DSC is responsible for developing performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability.

DSC is the state agency responsible for determining, on appeal, if a state or local agency's proposed project in the Delta (defined in the Act as a "covered action") is consistent with the Delta Plan.

DFG is the state trustee agency for fish and wildlife resources and has jurisdiction over the conservation, protection, and management of those resources.

DFG has regulatory authority over various activities including the diversion of water, alteration of streambanks and levees, and other development activities affecting species listed under the California Endangered Species Act (CESA).

DFG acquires, and is the owner of, lands within the Delta for the purpose of fish and wildlife management, restoration and protection and to provide recreational opportunities and public access.

DFG is the state implementing agency for the ERP under CALFED.

V. PRINCIPLES OF AGREEMENT

The Parties mutually agree to work in cooperation to achieve the following objectives:

- A. **To facilitate the development of an Interim and Comprehensive Plan for the Delta.** DSC agrees to consider incorporating the ERP Strategic Plan and ERP Stage 2 Conservation Strategy into the Delta Plan and Interim Delta Plan. DFG will provide technical assistance to DSC in assessing whether the Strategic Plan and the Stage 2 Conservation Strategy, and any actions contemplated thereunder, are consistent with the Delta Plan. As resources permit, DFG will also provide technical assistance to DSC in assessing other proposed Delta-related ecosystem projects.
- B. **To consider incorporating approved management plans for DFG owned and managed lands into the Delta Plan for DFG managed lands within the Delta.** The recommendations will recognize the resource management, conservation, public access and recreational benefits of those lands. The Delta Plan will also address the financial resource needs of the lands necessary to achieve their management objectives while taking into account the long-term sustainability of the Delta.
- C. **To identify actions in and outside the Delta that could contribute to meeting the co-equal goals of the Delta.** The DSC recognizes that, through ERP, DFG has an ongoing role in implementing ecosystem restoration actions in the Delta and its tributaries. DFG will use the ERP Stage 2 Conservation Strategy for the Sacramento and San Joaquin Rivers to identify those actions outside of the Delta. DFG will identify, fund and implement ecosystem restoration actions in and outside of the Delta in cooperation with its federal counterpart implementing agencies. DFG will report on implementation progress to the DSC on a quarterly basis.
- D. **To engage other agencies in the development of the Delta Plan.** DFG in its role as the state implementing agency for ERP works closely with the federal

implementing agencies, FWS and NMFS, to implement and monitor progress toward achieving ERP goals and objectives. The relationship provides a vehicle for engaging these federal agencies in the development and implementation of the Delta Plan. The three agencies through their responsibilities under the Endangered Species Act (ESA) and the NCCP Act in approving the BDCP work closely to ensure consistency in development of the BDCP and oversight of its implementation.

- E. To ensure DFG actions are consistent with the Delta Plan.** DFG as a land owner and manager implements projects which are considered "covered actions" pursuant to Water Code section 85057.5 and must be determined by DFG, prior to implementation, to be consistent with the Delta Plan. Those determinations of consistency may be appealed to the DSC. DFG will work with the DSC to incorporate the types of projects it undertakes into the Delta Plan to ensure their consistency with the Delta Plan.
- F. To ensure that the BDCP complies with the requirements of Section 85320 of the Water Code so that it may be incorporated into the Delta Plan**
- G. To develop a process for appeal of BDCP approval consistent with DSC's administrative procedures governing appeals.** If DFG approves the BDCP as an NCCP and determines that the BDCP meets the requirements of Water Code section 85320 for inclusion in the Delta Plan, that determination may be appealed to the DSC. If DSC does not agree with DFG's determination that the BDCP meets the requirements of Water Code section 85320 for inclusion in the Delta Plan, then the BDCP will not be incorporated into the Delta Plan and the public benefits associated with the BDCP will not be eligible for state funding. Any such DSC determination, however, will not affect the regulatory effect of the underlying determination by DFG that the BDCP complies with the NCCP Act. DFG and the DSC will work together prior to completion of the BDCP on a process for considering the appeal and for resolving any significant factual matters at issue.
- H. To ensure the best available science is used in the BDCP and Delta Plan.** DFG will work with the Delta Independent Science Board (DISB) and Delta Science Program (DSP) during the development of the BDCP to ensure that it has incorporated the best available science and has included a comprehensive research and monitoring program which will result in an effective adaptive management decision making process for the implementation of the BDCP and the Delta Plan. DFG will coordinate with all agencies charged with BDCP implementation and will ensure that the status of BDCP monitoring programs and adaptive management is reported to DSC at least once a year. DSC may make recommendations to BDCP implementing agencies regarding implementation of the BDCP, and, pursuant to Water Code section 85320(g), the BDCP implementing agencies will consult with the DSC on those recommendations.
- I. To coordinate transmission of scientific information.** DFG as a member of

the IEP is engaged in ongoing scientific monitoring and research in the Delta to track and understand biological changes within the Delta as they relate to operation of the state and federal water projects and its resource management responsibilities. DFG and DISB will work together along with the other members of the IEP to ensure that the collection and synthesis of scientific information is coordinated and effectively transmitted to the DSC and other decision makers.

J. To develop an integrated set of scientifically-based performance measures.

DFG through its responsibilities as part of the ERP and Water Code section 85084.5 is charged with developing quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The Delta Plan and BDCP are also required to include performance measures to enable the DSC and BDCP implementing entities to track progress toward meeting objectives of the plans. DFG and the DSC through the DSP will work together to develop an integrated set of scientifically-based performance measures.

K. To memorialize in writing meetings between DSC and DFG as appropriate.

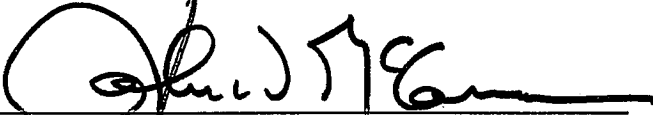
VI. GENERAL PROVISIONS

- A. Nothing in the MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of DFG or DSC.
- B. Nothing in the MOU binds DFG or DSC to perform beyond their respective authorities.
- C. Nothing in this MOU requires DFG or DSC to assume or expend any funds in excess of available appropriations authorized by law.
- D. The mission requirements, funding, personnel, and other priorities of either DFG or DSC may affect their ability to fully implement all the provisions in this MOU.
- E. Specific activities that involve the transfer of money, services, or property between DFG and DSC may require execution of separate agreements or contracts.
- F. Any information furnished between DFG and DSC under this MOU, including the MOU itself, is potentially subject to the California Public Records Act, Gov. Code § 6250, et seq. (CPRA). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith in the event either Party desires to assert a privilege or exemption permitted by the CPRA.
- G. Amendments or supplements to this MOU may be proposed by DFG or DSC and shall become effective upon written approval of the Parties.

H. DFG or DSC may terminate this MOU at any time through written notification to the other Party at least thirty (30) days prior to termination.

I. This MOU shall become effective upon signature by the Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below.

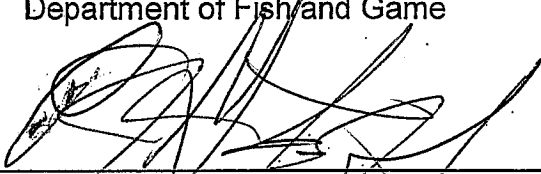
VII. APPROVALS



John McCamman, Director
Department of Fish and Game

12/17/10

Date



Joe Grindstaff, Interim Executive Officer
Delta Stewardship Council

1/4/11

Date